

LABOUR DEPARTMENT

The 21st October, 1994

No. 14/13/87-6Lab./703.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula *versus* Jugti Ram.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 11 of 1988

between

JUGTI RAM C/O SHRI MAHAVIR TYAGI, ORGANISOR, INTUC, DELHI
ROAD, GURGAON

and

THE MANAGEMENT OF M/S (1) CHIEF ADMINISTRATOR, HARYANA
STATE AGRICULTURE MARKETING BOARD, 6/6 PANCHKULA,
DISTRICT AMBALA. (2) ADMINISTRATOR, MARKET COMMITTEE,
GURGAON

Present :

Shri Mahavir Tyagi, for the workman.

Shri S. K. Yadav, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (in short "the act") the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government, Labour Department, Endorsement No. 12985—90, dated 1st April, 1988 :—

Whether termination of services of Shri Jugti Ram, is legal and just? If not, to what relief is he entitled ?

2. The facts given in the claim statement are that the petitioner Jugti Ram was appointed as Sweeper on 1st May, 1984 and the management terminated his services on 3rd November, 1987 without assigning any reason and he was drawing salary of Rs. 500/-p. m. The petitioner was never charge-sheeted and his record was clean. No notice or compensation was given and he has thus challenged his termination.

3. Upon notice, the respondent appeared and filed its written statement and took up the plea that the respondent Market Committee was not an industry and the petitioner was not a workman and therefore, he had no *locus standi* to file his claim. It was however, admitted that the petitioner was appointed as Sweeper but on 1st September, 1986 on adhoc basis subject to the condition that vacancy would be filled thereafter through Employment Exchange. It was pleaded that the petitioner had worked from time to time but with breaks in between and he was not entitled to any relief.

4. In the replication, contents of the written statement were controverted while those of the claim statement were reiterated.

5. On these pleadings, following issues were framed on 21st April, 1989 :—

1. Whether the respondent is not an industry as defined in the Act ?
2. Whether Jugti Ram is not a workman as defined in the Act ?
3. Whether termination of services of Shri Jugti Ram is legal and just ? If not, to what relief is he entitled ?

6. I have heard authorised representatives of the parties. My findings on the issues framed are as under :—

Issues No. 1 and 2

7. Both the issues were not pressed before me, therefore, these issues shall be taken as not pressed.

Issue No. 3

8. The management has examined Bala Ram, Mandi Supervisor, as MW1, who deposed that Jugti Ram was working as Sweeper from 1st June, 1986 till 30th November, 1986, 3rd December, 1986 to 28th October, 1987, 5th March, 1987 to 9th September, 1987 and 21st September, 1987 to 31st October, 1987 and his wages were being paid on the muster rolls. It was stated that the muster rolls had been destroyed. However, summary had been prepared and the name of the petitioner had been shown at serial number 2. It was also stated that the petitioner was drawing a salary of Rs 500/ p.m. He also deposed that when ever the respondent had engaged any employee, resolution was passed, but copy was never given to the worker.

9. On the other hand, workman has stepped into the witness box as WW1. He deposed that he was working as a Sweeper with the respondent from 1st May, 1984 and his services were terminated on 3rd November, 1987 without assigning any reason and the management did not give any notice or pay in lieu thereof and they had employed some other person. He added that he was not working anywhere and his children were earning. In his cross examination, he stated that there was another Jugti Ram, who was working as Sweeper. He added that that person might have been employed by the management in April, 1986.

10. The management has placed on record list of the persons, who were retrenched by the Market Committee. It also includes the name of the petitioner and is shown at serial number 2. According to it, he was engaged as a Sweeper on daily wages on 1st June, 1986 and worked till 31st October, 1987. There are short breaks of one or two days and at one time gap of 15 days was also given. The days have been calculated and according to the respondent, working days comes to 409 days. Petitioner, however, has pleaded that he was working as Sweeper since May, 1984, but that fact could not be proved on the record, nor the petitioner has been able to bring any record on the file and we have only his bare statement. Undoubtedly, the petitioner had worked for a period over 240 days. According to the management, the workman each time had been employed for a fixed term and with the end of the term he could not be said to have been retrenched within the meaning of the Act and there was no need to comply with the provisions contained in Section 25F of the Industrial Dispute Act, 1947.

11. There is no denying the fact that the workman in this case had been employed each for a certain period. Whether his services were terminated on completion of work assigned or this was employed to deprive him of the benefits which accrue to a person on account of his long service has been the subject matter of enquiry before various judicial forums. At time it has been found that this device is employed i. e. of giving employment for a particular period and again for identical period after a gap of about 5-6 days so as to disrupt the continuity of his service. The Courts after examining the facts of a particular case at times have held to be an unfair practice. The identical proposition came up for consideration before the Hon'ble High Court in case reported as *Kapurthala Central Co-operative Bank Ltd. Kapurthala versus Presiding Officer, Labour Court, 1984 (2) Indian Law Reporter 333*.

12. In this case, no departmental enquiry was held, nor any chargesheet was served, nor the management has been able to bring any material on the file to show that the conduct and service of the workman was unsatisfactory. No notice or compensation was even granted. The workman had worked for more than 240 days. Examined thus, I find that the termination of services of the petitioner is illegal and not justified. The petitioner is thus entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly.

ANITA CHAUDHARY,

The 14th September, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1451, dated 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.